THE STATE OF WYOMING

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May 15, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M St., N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Initial Comments of the Wyoming Public Service Commission in CC Docket No. 96-98

Dear Mr. Caton:

Enclosed herewith are the original and sixteen copies of the referenced Initial Comments of the Wyoming Public Service Commission. Please file the same and furnish copies to the Commissioners.

Thank you for your kind assistance with this matter. I would be pleased to answer any questions concerning the enclosed material.

Yours very truly,

STEPHEN G. OXLEY
Administrator

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Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

INITIAL COMMENTS OF THE WYOMING PUBLIC SERVICE COMMISSION

The Wyoming Public Service Commission (WPSC) hereby submits its initial comments pursuant to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking issued in the above-captioned matter on April 19, 1996 (NPRM).

1. **An introductory observation about the pragmatic policy of the federal Telecommunications Act of 1996.** The federal Telecommunications Act of 1996 (Act) establishes a procompetitive, technologically progressive and relatively comprehensive framework for the future development of the telecommunications industry in the United States. The Act recognizes that the task of bringing about the improved telecommunications system that it envisions is extremely complex; and it recognizes that the task must be accomplished through the cooperative efforts of the federal government and the states. It consequently allots specific tasks to the states and to the federal government.

The Act wisely makes the judgment that the system must have some national uniformity for it to fit together and function properly in a more

competitive environment. In Section 251, it requires telecommunications service providers to provide access to their systems on a competitively neutral basis. It requires companies to interconnect with one another and to do it on the basis of reasonably uniform technical standards. The Act thus aims to prevent defensive anticompetitive behavior by established service providers that would prevent new entrants from coming meaningfully into the market. It thus requires a reasonable degree of cooperation among service providers. Section 252 sets up a framework for a regular process for formalizing interconnection agreements in the new competitive environment and makes procompetitive judgments about how prices should be set under these new agreements. Section 253 prohibits the erection of barriers to entry into the new market and gives the federal government the power to break down barriers that states might seek to erect against the competitive forces which are driving the industry. It insures that the process will not become bogged down with local disputes or provincialism. No person or entity, private or governmental, national or local, is allowed under the Act to construct barriers to entry into the new market.

The Act gives the federal government specific responsibilities but wisely does not attempt to place on the federal government the sole responsibility for making the system work. The Act very consciously leaves substantial, real and specific responsibility to the states which, because of their experience with local issues, their first-hand knowledge of the local complexities of infrastructure, and their resources of time and people, are equipped to deal with the many details which must be worked out if the better system envisioned by the Act is to be realized.

The Act does *not* make the judgment that the entire telecommunications system in the United States must be the same or that it is best governed from one

point of central control. The Act makes the judgment that the system should work--that it should fit together and function seamlessly for the good of the public. It gives the FCC the responsibility to root out barriers to competition and to take over control of situations when states fail to shoulder their responsibility under the Act. It does not nationalize the entire effort.

2. "One-size" probably will not fit all: maintaining a cooperative and result-oriented perspective. The extremely detailed sweep of the rules proposed in the NPRM is unnecessary and counterproductive to swift and rational implementation of the Act. Nowhere does the Act mandate that the FCC must immediately "reach down" among the state jurisdictions, discover diversity, and stamp it out as an inherent evil during the first few months after the passage of the Act. Practically speaking, the United States' telecommunications system is too complicated to be adequately administered from a single point of central control. Legally speaking, the Act makes a real federal-state division of responsibility which should not be treated as a sham. The Act is not a pretext for gathering all regulatory responsibility into the FCC; and the commitment of states to a newer and better telecommunications system should not be discounted out of hand.

The FCC should set the national parameters for the system where they are called for in the Act and should be prepared to take action when the states will not; but not all of the parameters should be federal or universal. The Act should not be misconstrued as a call for a "one-size-fits-all" solution. The complexities of the system almost guarantee that such an approach will produce a "one-size-fits-nobody" result -- that it will either be a failure or will produce a tepid result that is less vigorous and less complete than it could be. (We note that other nations which have experimented with completely national control over their

telecommunications systems have generally rejected this pallid model when the opportunity presented itself.)

Because single paradigm solutions must consider the "greater good," Wyoming has, in the past, had opportunities to experience the relatively negative effects they have on those who, for one reason or another, do not fit the paradigm. Regarding telecommunications, Wyoming is an essentially rural and relatively sparsely populated state which has some of the highest cost to serve exchanges and customers in the nation. Our customers nevertheless need more sophisticated telecommunications services not only in our cities but also in our sparsely populated rural areas. We therefore cannot afford to be subjected needlessly to the problems which models designed to address other people's problems would cause for us.

Wyoming has responded to the needs of its citizens by making a sustained and systematic effort to solve the problems of technological modernization and competitive telecommunications market development. The state has taken aggressive, positive steps. Our telecommunications service providers have made significant improvements even in the face of markets that are not the most concentrated or lucrative. The WPSC has worked actively and successfully with legislative, governmental, consumer and industry groups to develop the Wyoming Telecommunications Act of 1995 which is a sophisticated, comprehensive and procompetitive telecommunications law that addresses most of the same telecommunications issues confronted in the federal Act. We have made significant advances on a number of telecommunications rulemaking subjects, including interconnection and total service long run incremental cost (TSLRIC)

concepts as well as on rules regarding a Wyoming universal service fund and standards for telecommunications service quality.

The point of this observation is that states like Wyoming occupy a place on the cutting edge of procompetitive, market-oriented telecommunications policy along with the federal government, and have, in fact, been there longer. Wyoming can point to a solid record of accomplishments which place it well along in the process of implementing policies which are in accord with the federal Act -- and which address the unique local circumstances which must be dealt with if the effort is to be a success. "State action" is not a code word for failure. Like federal action, state action should be judged on its merits; and its value in the overall effort to bring about a better telecommunications system for the nation must not be discounted. The Act does not do so explicitly, and the WPSC does not believe that it can fairly be "discovered" in it.

Therefore, the WPSC urges the FCC to refrain from imposing rules at the stifling level of detail contemplated in the NPRM to "implement" the Act. Instead, the FCC should sparingly and judiciously promulgate more general rules, and rely on the state commissions to discharge their duties, as required under the Act. Our suggestion is not a reflexive grab at jurisdiction but a serious observation about how the tools provided by the Act can best be employed to achieve the result which Congress, and Wyoming, both explicitly desire.

3. **Is the role of the states real?** The Act sets out a wide variety of tasks which the states must perform. The fact of federal-state partnership in administering the Act shows clearly in the quality of the work required from the states. Each one of the state obligations set out below shares some critical common

elements: each requires detailed knowledge of local conditions, each requires the ability to devote considerable effort to individual cases, each requires a relatively sophisticated knowledge of the telecommunications industry, and each must be undertaken and completed in a relatively short time. Each, in short, requires the local touch, harmonized by a national vision to be sure, but not strangled by overzealous national uniformity. The WPSC has addressed each item below in rulemaking or other implementation procedures. The list below is not exhaustive.

a. States must determine "reasonable" conditions on resale, consistent with FCC rules. Section 251(c)(4)(B). States determine wholesale (retail less avoided costs) prices for resale. Section 252(d)(3).

b. States can allow virtual collocation under certain conditions. Section 251(c)(6).

c. States administer the "rural waiver" mechanism pertaining to the additional obligations of Section 251(c). *See*, Section 251(f); and compare it with the provisions of similar intent in the Wyoming Telecommunications Act of 1995.

d. States administer the rural suspension/modification mechanism pertaining to the requirements of Subsections 251(b) and (c). *See*, Section 251(f).

e. Any interconnection agreement adopted by negotiation or arbitration must be submitted for approval to the state commission. Section 252(e)(1).

f. If negotiating parties cannot agree, upon request, states must resolve disputes preventing interconnection agreements. Section 252(b) and (c).

g. States determine whether interconnection, unbundling and reciprocal compensation rates are just and reasonable, using criteria stated in the Act. Section 252(d).

h. States approve Bell operating company statements of generally available terms and conditions to comply with Section 251. *See*, Section 252(f).

i. States designate "eligible telecommunications carriers," who may then receive federal universal service support. Sections 253(f) and 214(e).

The WPSC is concerned that the justifications the FCC presents in its NPRM for prescribing detailed and expansive rules to implement the Act (which also serve to tether the states) is that such rules "could guide states that have not yet adopted the competitive paradigm" and that they "could expedite the transition to competition, particularly in those states that have not adopted rules allowing local competition." NPRM, paragraph 28. The FCC cites there and other places in the NPRM (e.g., footnotes 43 and 70) that "more than 30 states do not have rules governing local competition in place today, most of those states have not commenced proceedings to adopt the necessary rules."

First, the WPSC would observe that the essence of "the competitive paradigm" is not monolithic uniformity but rather the freedom to experiment, to excel, and to innovate. True competition is highly adaptive and energetic and should not be preemptively and centrally "administered." Nowhere in the Act is

there an actual mandate for the FCC to tell the country what competition is and is not.

Second, the NPRM errs, at footnote 10, in not listing Wyoming among the 19 states which are making rules governing local competition. Wyoming is, in fact, among the most advanced states in this regard.

The WPSC would like to bring it to the FCC's attention that it is bound by a state telecommunications law which predates the federal Act by a year (the Wyoming Telecommunications Act of 1995) and which is expressly intended to be very procompetitive and broadly deregulatory. The WPSC is in fact nearing the completion of a number of rulemakings to implement the competitive provisions of the Wyoming Act.

Through information furnished by the National Association of Regulatory Utility Commissioners (NARUC), we have reason to believe that, contrary to the FCC's assertions in the NPRM, the overwhelming majority of state commissions are currently implementing procompetitive policies in telecommunications orders and rulemakings. Rather than the case of "30 states not having rules in place, or rulemakings commenced", that number is probably very much closer to zero. The WPSC understands the difficulty of trying to survey the fifty states to find out precisely where various issues stand. The FCC should not rely on this "30 state" number in finding itself constrained to make its decisions on these rules, as it most assuredly massively overstates the number of states that are not implementing procompetitive policies.

4. **What constitutes the best national vision?** The FCC does have its own concerns and responsibilities to implement under the Act, and the FCC advances several points beyond them in favor of "national standards" or rules. For example, "by narrowing the range of permissible results, concrete national standards would limit the effect of the incumbent's bargaining position on the outcome of negotiations" of interconnection and unbundling arrangements. NPRM, paragraph 31. Also, "explicit national rules . . . could provide important guidance to federal district courts that are charged with reviewing state determinations of whether particular arbitration agreements are consistent with Section 251." NPRM, paragraph 31. Additionally, "the Commission needs to articulate clear rules that clarify what constitutes compliance with section 251 for purposes of our (FCC) review under section 271" (of in-region, interLATA service requests). NPRM, paragraph 32. The NPRM does not, however, advance any reasoning that compels the conclusion that detailed and expansive FCC rules are required. The Act calls for rulemaking by the FCC to furnish an additional level of detail beyond that contained in the Act itself where national rules are needed, but the FCC should resist the temptation to prescribe additional tiers of detail beyond that.

If the Act had envisioned broadly preemptive federal rulemaking, it would have explicitly nationalized all aspects of the regulation of telecommunications in the United States. It did not do that, and its deference to the states on issues with a genuine local dimension should not be dismissed as a sham. The Act, we believe, neither mandates nor desires an outcome which would result in overprescription to the states and a loss of state flexibility to apply their expertise to implementation of the Act.

Section 601(c)(1) of the Act states that "[t]his Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments." In light of this provision, it is something of a "leap of bad faith" to assert that the Act can be parsed to yield a conclusion that the states were intended to be reduced to client status or made simple agents of the federal government. It is simply wrong for the FCC to conclude that its authority under Section 251 of the Act supersedes state authority under that and other sections of the Act.

The Act's national vision clearly has a local component. Among its explicit directions, the Act states that, in prescribing its rules, the FCC shall not preclude state commission regulations, orders, or policies that establish access and interconnection obligations of local exchange carriers when they [i] are consistent with the requirements of Section 251 of the Act and [ii] do not substantially prevent implementation of the requirements of Section 251 or the purposes of Part II of the Act -- Development of Competitive Markets. The WPSC is currently near the conclusion of rulemaking processes under the Wyoming Act intended to facilitate the development of competition in its telecommunications markets. These rules have been drafted to be explicitly consistent with the directions of the federal Act and the Wyoming Act, both of which bind the WPSC. Our draft rules regarding [i] Total Service Long Run Incremental Costs, and [ii] Interconnection and Compensation Among Local Exchange Competitors are attached to these comments so that the FCC may see the genuine, substantial and procompetitive progress being made in Wyoming.

At Section 547, General Statement, the Wyoming Interconnection rule states that

". . . [a]ll carriers have equal status and responsibility to contribute to the continuation of a ubiquitous, seamless and interoperable telecommunications "Network of networks" in Wyoming. A seamless, fully integrated and ubiquitous network is a necessary requirement for effective and efficient local competition. Any and all relevant disputes between carriers regarding provisions of these rules shall be brought on a timely basis to the attention of the Commission for its action, pursuant to Sections 251, 252 and other applicable provisions of the Telecommunications Act of 1996, and to the complaint provisions contained in Commission Rule Section 114. These rules are promulgated after full review of the Telecommunications Act of 1996, and are meant to be consistent with that Act."

The WPSC submits that this articulates a vision which is both consistent with the vision of the Act and considerably advanced in its development. It is not a dangerous local eccentricity worthy of preemption in the name of the national good. It is also clear evidence that the states are serious, that some do, in fact, "get it" and that they are not in need of overly detailed "guidance."

4a. Note concerning the status of Wyoming rules. Our references to the current versions of the WPSC's draft rules on interconnection and total service long run incremental cost, as attached to this Initial Comment, are presented for the purpose of responding to the NPRM and should not be construed as prejudgment by the WPSC of any issues remaining to be decided in these rulemaking proceedings now scheduled to be completed early in August of 1996 (on a timetable consistent with that of the FCC).

5. Should the FCC reach out and absorb all aspects of regulatory jurisdiction? At paragraph 37 of the NPRM, the FCC "tentatively" concludes "that Congress intended sections 251 and 252 to apply to both interstate and intrastate aspects of interconnection, service and network elements, and thus that our regulations implementing these provisions apply to both aspects as well." Out of the context of the NPRM, this conclusion might be no more than a benign recognition that many telephone calls cross state lines and that local and long distance facilities are necessary to complete them. It could be a recognition that a procompetitive federal policy and an anticompetitive state policy don't mix -- that this disharmony could frustrate the Act's conclusion that seamless interconnection at reasonably established prices, and thus healthy competition, should come to all aspects of the telecommunications business for the benefit of the public. A leap beyond this possibility to the conclusion that state jurisdiction must therefore be stamped out once and for all is unwarranted and improper. Federal rules should be carefully crafted to articulate the policy of the Act and not to smother the states. Although that is marginally more difficult than settling on one monolithic nationalized plan, it is not an impossibility. It requires only that the FCC recognize in its rules the good efforts of the states and to set some broad, nonrestrictive parameters which serve notice on the states that the FCC will step in when a state takes action to frustrate the policy of the Act.

6. Should the existence of federal jurisdiction over aspects of interconnection be construed to eradicate state jurisdiction? At paragraph 41 of the NPRM, the FCC notes that it has existing complaint jurisdiction over common carriers under existing Section 208 of the Act (amended in the 1996 Act) and asks if this means that the FCC has "authority over complaints alleging violations of requirements set forth in sections 251 and 252." It further asks whether there is "a

relevant distinction here between complaints concerning the formation of interconnection agreements and complaints regarding the implementation of such agreements." The WPSC submits that, although there are relevant distinctions among the various aspects of interconnection agreements, they should not be misapplied as "directives" to the FCC to expand federal jurisdiction beyond that envisioned by the Act.

Where Sections 251 and 252 speak about federal jurisdiction over interconnection it is in the general terms of "consistency" -- representing the judgment of Congress that the development of the new telecommunications system should not be chaotic but should be governed by principles of general applicability. Where the Act is specific on the subject, it is not a matter of conjecture or speculation about the derivation of hidden meaning. In Section 251(g), for example, the Act requires that the "local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations . . . that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment." Clearly, Congress invites the FCC to remake existing federal decisions regarding interconnection and access as rules in the spirit of the Act. There is no talk of consistency or state action here. Clearly the interconnection mandate is federal in this instance.

However, where meaningful state action is contemplated, the Act is not silent. For example,

> Section 251(c)(4)(B) (state commission may prohibit resale of services only to a different group of subscribers than those who could otherwise obtain them);
>
> Section 251(c)(6) (virtual collocation may be approved in place of actual collocation "if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations"); and
>
> Section 251(d)(3) (in making and enforcing regulations under Section 251, the FCC "shall not preclude the enforcement of any regulation, order, or policy of a State commission" that establishes access and interconnection obligations of local exchange carriers if it is consistent with Section 251; and "does not substantially prevent implementation of the requirements of this section and the purposes of this part");

all clearly illustrate the policy of the Act in Section 251 as it favors local administration of the details of interconnection. Section 252 likewise provides for the states' role in administering the law in the negotiation, mediation, arbitration and approval of interconnection agreements, and in the setting of prices thereunder.

Perhaps the clearest example is found in Section 251(f) regarding the conditional exemptions of some rural telephone companies from the duty to interconnect. The duty to act is clearly placed in the hands of the state commissions,

as is the ability to extend or terminate exemptions. The Act, as in so many other places, requires consistency with the national goals and policies of the Act and lets the FCC make rules to this effect; but it reserves an ongoing role to the states in administering interconnection agreements and their applicability.

Therefore, we answer the FCC's questions posed in paragraph 41 as follows:

Does the FCC's general jurisdiction over complaints mean "that the Commission has authority over complaints alleging violations of requirements set forth in sections 251 and 252? If not, in what forum would such complaints be reviewed? In state commissions? In courts?" Our answer to the first question is no. Federal authority should exist, but it is not total. If the alleged violations are by carriers who refuse to negotiate, who break state-approved interconnection agreements or who otherwise fail to observe the provisions of these Sections of the Act, then the jurisdiction lies first with the state commissions. They have the resources and expertise to devote to the details of these agreements. Further, the administration of an interconnection agreement, not being an appellate activity, should be done in reliance on the expertise of the original approving entity for efficient and rapid decisions on the facts.

The Act, at Section 252(e)(6) allows the FCC to proceed "in a case in which a State fails to act." However, the Act does not conclude that the FCC should have universal jurisdiction over state actions. Section 252(e)(6) also states that, "[i]n any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section." It does not tell the FCC to take over at

this point. *The Act simply and clearly expresses a preference for an administrative decision in the first instance. It does not express a mandate to the FCC to supplant state jurisdiction.* In fact, the provision for appeal to the federal courts is completely consistent with an unambiguous acknowledgment by the Congress that state jurisdiction is an important component of the process envisioned by the Act. The intent of the Act, again, is explicit and does not need to be discovered.

"Is there a relevant distinction here between complaints concerning the formation of interconnection agreements and complaints regarding the implementation of such agreements?" There are some distinctions, but they are not really germane to an argument about jurisdiction over interconnection agreements. They do not furnish an adequate pretext for concluding that states, which are intended to apply their resources and experience to the formation of such agreements, are somehow, *and without express language in the law to that effect,* necessarily prevented from applying their expertise where it so obviously would be of value.

If state commissions are authorized to issue their orders approving or disapproving interconnection agreements, it is more logical to assume that later problems which might arise among the parties should be decided by the entity which examined the matter and issued the original order ("determination") on the agreement. Complaints regarding implementation are generally not exclusively appellate in nature and do not require immediate and automatic reference to another forum. Since appellate review of state actions (rather than state inaction) appears to lie with the courts rather than with the FCC, this result is preferable to one which unnecessarily fragments jurisdiction

7. **Does the Act really intend to draw on the expertise of the states?** We believe that it does and that it does so for a good reason. The Act wisely taps into the considerable strength of fifty state commissions which have relevant experience in dealing with local exchange companies. As the national telecommunications market continues to develop, much of the remaining work of competitive interconnection consists of local issues of transition by local exchange companies which are certificated and regulated by the state commissions. There is, relatively speaking, much less to do of a specifically interstate nature, that portion of the market having already enjoyed considerable competitive development. Where national matters need to be addressed, they are set forth in the Act. See, e.g., Section 251(b)(2) regarding number portability; Section 251(c)(4)(b) regarding limitations on resale; and Section 251(e)(1) regarding numbering administration.

Put another way, under what circumstances would either the consumer or the advancement of competition for the consumer's benefit be better served by transferring the regulation of local telephone exchanges from state to federal control? The hands-on experience of the states which are close to problems (and therefore close to solutions) would be lost. The vigor of competition among states to encourage competitive development in their particular jurisdictions would be lost. The states as laboratories for innovation would be reduced to simple federal client entities. The ability to introduce vitality into the system -- through the ability to interpret and adapt pragmatically to local circumstances -- would be lost. Note also that the Act, as finally passed by the Congress, did not eradicate Section 152(b) of the Communications Act of 1934 which reserves intrastate jurisdiction to the states, although there was a move to do so during the Act's consideration.

8. The general duties of local exchange companies. Incumbent local exchange companies have obligations under section 251(c) of the Act regarding, among other things, interconnection, collocation and unbundled network elements -- all key components of a more fairly competitive telecommunications market which must function smoothly if the Act is to have its intended effect. Below, the WPSC will discuss its own progress to date on these subjects and will suggest, in the process, [i] that this sort of action precisely fulfills the role intended by the Act for the states, and [ii] that it would be violative of the Act if the FCC were to displace this reasoned and procompetitive state activity.

8a. How should the states be able to deal with interconnection requirements? The WPSC clearly has the necessary statutory authority, under the federal Act and the Wyoming Act, to promulgate rules governing interconnection and to set the prices, terms and conditions for that interconnection, with the natural (and proper) exceptions that they should not be inconsistent and should not be defensive actions amounting to barriers to entry. The WPSC has taken this obligation seriously. Our draft rules on Network Interconnection and Unbundled Access, at Section 549a, already contain the following:

- Proposed interconnection agreements (or statements of generally available terms) must be filed for WPSC approval under the timetables and procedures of the Act.

- Incumbent LECs shall provide interconnection and unbundled access to another LEC on a co-carrier basis, not as a customer.

- Prohibition of discrimination between competing LECs, including delay in providing new arrangements or functions; inferior provisioning, installation, quality of service, or maintenance; limitations regarding access to poles, ducts, conduits and rights-of-way; exclusive or preferential sharing of information with affiliates and subsidiaries; uneconomic pricing; or defining a relationship with competing LECs as end-user customers rather than network peers is strictly prohibited.

- Bona fide individual orders for connection of facilities are to be promptly fulfilled.

- The most current Customer Account Record Exchange (CARE) record, in its then existing form, is to be provided by one LEC to another, upon notice that a specific customer desires to change carriers.

- All LECs are to manage their repair service and reporting so that all relevant information is provided in a timely and mutually agreeable manner to the entity which can actually make the needed network repairs or corrections.

- Boundaries for each carrier are to be publicly stated and filed with the Commission.

- Local exchange carriers must cooperate in planning, emergency preparedness, directory assistance, ordering, billing and any other functions necessary to ensure the provision of essential telecommunications services, to provide for public safety, and otherwise promote public convenience.

We believe that it would be wrong for the FCC to preclude the WPSC from adopting and carrying into effect rules as described above. Detailed rules promulgated at the national level by the FCC could not adequately anticipate the unique operating characteristics of the Wyoming telecommunications system and could adapt only sluggishly to them as competition continues to develop. Interconnection agreements negotiated under such limitations would be unduly and unnecessarily restricted, contrary to both the letter and the intent of the Act.

The idea that there should be highly detailed national interconnection standards, terms, conditions, and prices also contains implicit, and seriously flawed, underlying assumptions which should not be allowed to become rules. There is an assumption that costs are (or should be) uniform throughout the nation -- that costs are measured or exist on a uniform basis (e.g., embedded or TSLRIC analysis) and that the existing rate structures of local exchange companies are somehow uniform throughout the country. There is also an implicit and unjustified assumption of technological uniformity in the desire for uniformity of regulation.

Such leveling or "homogenizing" assumptions, necessary if overly detailed national rules are to be made, are clearly untenable on their face and would lead to undesirable results. The wiser direction for the FCC would be to devote its energy to refining and articulating the broad policy goals and objectives needed to make the Act function as it should, while leaving to the states the necessary latitude to address the myriad of details which arise in actually implementing efficient interconnection. If the FCC's rules are well crafted, they will maintain the Act's required federal-state partnership and will give the FCC a sound basis for measuring how successfully (or not) the individual states are discharging their responsibilities under the Act.

8b. How should the states deal with collocation issues? At Section 549a, the WPSC's draft rules on Network Interconnection and Unbundled Access contain the following requirements on collocation:

> "Physical collocation of equipment necessary for interconnection or access to unbundled network elements shall be provided at the premises of the incumbent local exchange carrier, except that the carrier may provide for virtual collocation if it is demonstrated to the Commission that physical collocation is not practical for technical reasons or because of space limitations. The functionality of equipment to be collocated, along with the vendor decision for any required equipment purchases, should be negotiable among the parties. Virtual and physical collocation have the meanings ascribed to those terms in the Federal Communications Commission CC Docket 91-141, Expanded Interconnection with Local Telephone Company Facilities."

Again, the WPSC has articulated a workable and thorough rule squarely within the letter and spirit of the Act. It utilizes the FCC's definitions of the terms "virtual collocation" and "physical collocation" and uses them to help in building the details of locally relevant rules -- another example of how general (national) and particular (local) concepts can and should work in harmony.

We suggest that the FCC should not act to preclude properly adopted Wyoming rules as described above. The Act states that, except for certain defined exceptions, physical collocation is required. It appears that the "national standard" -- physical collocation -- is set by the Act. That standard should be placed in the FCC's

rules, but the temptation to overly detailed definition should be resisted. Additionally, if the FCC were to maintain the active partnership with the states, there would be fifty commissions, rather than one, addressing the complexities presented by each individual collocation question. The work of deciding collocation questions could be completed much faster and at a substantial savings in time and money because the states are familiar with local physical plant conditions and capabilities and the parties have a convenient forum. The FCC can retain a broad perspective and need not take action except when the system fails to function properly.

8c. How should the states deal with the challenge of unbundled network elements? The WPSC's draft rules on Network Interconnection and Unbundled Access address unbundling of network elements at Section 549b with the following requirements:

- Incumbent LECs must make network elements available to competing local exchange carriers on an unbundled, non-discriminatory basis.

- The minimum level of such unbundling (the basic list of network elements), subject to future expansion if needed, shall be:

  (A) Local Loop Distribution
  (B) Local Loop Concentrator
  (C) Local Loop Feeder
  (D) Local Switching
  (E) Operator Services
  (F) Tandem Switched Local Transport

(G) Dedicated Local Transport

(H) Interoffice Transport

(I) Signaling Links

(J) Signal Transfer Point (STP)

(K) Signal Control Point (SCP)

- Unbundled elements are to be provided by the LEC in such a way that requesting carriers can combine them to provide telecommunications services.

- 2 and 4 wire loops and line side connections are to be available.

- Unbundled access is to be provided subject to FCC determinations regarding access to network elements that are proprietary in nature.

- Further unbundling shall occur at the option of the incumbent LEC, or upon further rule, if reasonable proven need or demand is shown to the Commission.

- Non-discriminatory access is to be provided to databases and associated signaling necessary for call routing and completion.

- Non-discriminatory access is to be provided to 911 and E911 services, directory assistance services and operator call completion services.

- A unified published directory is essential to the public, and incumbent LECs shall include white pages listings of customers of any other LECs.

- Incumbent LECs are required to permit and facilitate unaltered transmission of signaling information between interconnected carriers, and their customers, and may not claim a proprietary right to signaling protocols or elements of them.

We believe that the above list of unbundled network elements is sufficient to allow network interconnection at realistically economic points and therefore do not find that unbundling to this level could be considered either burdensome or discriminatory (in light of the exceptions noted below).

It is easily possible to compile a list of elements that is much more detailed than the one now included in our draft rules. We have not done so and urge the FCC not to do so either. A more exhaustive list would, erroneously, we believe, assume a nonexistent high degree of similarity among the various local network architectures now in place across the nation. In fact, many network elements which could potentially be unbundled and separately costed and priced might not even be available in all areas of the United States. Examples include some elements related to the provision of such services as ISDN, SONET, SS7, Packet Switching, ATM, and others.

Given this actual diversity, it would be far better to allow the states to determine the actual elements which should be unbundled beyond the eleven currently on the list. The decision should be based on the particular facts of the situation at hand, on competitive market conditions and on bona fide requests for interconnection. This sort of determination, one that must be made quickly and which must take into account local facts, is the type which state commissions are